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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,213	11/16/2005	David William Manley	4623-050766	2312
28289 7590 10/03/2008 THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219				
EXAMINER				
HYLTON, ROBIN ANNETTE				
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3781				
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10/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,213

Applicant(s)

MANLEY, DAVID WILLIAM

Examiner

ROBIN HYLTON

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date 3-20-06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3,14 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Burnett et al. (US 4,230,231). See figs. 1 and 2 regarding the structure of the closure.

Regarding claims 19-21, wherein the structure of the wine bottle is not set forth, the bottle of Burnett is capable of being a wine bottle.

3. Claims 1,2,4,14, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner (US 6,216,897). See fig. 2.

4. Claims 1-5,14, and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Taliaferro (US 1,381,365). See the figures depicting inner and outer threads on the closure sidewall. Regarding claims 19-21, wherein the structure of the wine bottle is not set forth, the bottle of Taliaferro is capable of being a wine bottle.

5. Claims 1-3,5,6,14, and 19-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Vinas Riera (US 3,499,568). See figures regarding structure. Regarding claims 19-21, wherein the structure of the wine bottle is not set forth, the bottle of Vinas Riera is capable of being a wine bottle. The closure inherently has a degree of porosity.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vinas Riera.

Vinas Riera discloses the claimed closure except for the dome shape of the upwardly extending portion, the material of the disc, and the porosity of the closure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make form the upwardly extending portion of the closure with a dome shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1976). Doing so allows for a more aesthetic closure arrangement.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vinas Riera.

Vinas Riera discloses the claimed closure except for the sealing member being a thin, clear disc.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form sealing member of a thin, clear disc, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Doing so allow for one to view the container contents from the top of the associated container.

9. Claims 8-10 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taliaferro.

Taliaferro discloses the claimed closure except for resilient membrane or biasing means. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a biasing means to the closure of Taliaferro as a known component of a closure. Doing so assists in maintaining a seal between the closure and an associated container neck opening.

10. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taliaferro in view of Landau (US 2,075,346).

Taliaferro discloses the claimed closure except for location means for engaging a container undercut.

Landau teaches it is known to provide the closure with location means for engaging a container undercut.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of location means for engaging a container undercut to the closure of Landau. Doing so assists in maintaining a seal between the closure and an associated container neck opening.

Conclusion

11. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to

Art Unit: 3781

and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

13. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720/80 will be promptly forwarded to the examiner.

14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 8:00 a.m. to 2:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3781

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

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GAU 3781